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From: Linda Riley <linriley@NMSU.Edu>
To: "Ben Freeman" <BFREEMAN@fcc.gov>
Date: Wed, Oct 6, 1999 4:01 PM
Subject: Re: Assessment of Technology Infrastructure in NativeCommunities

Hi Ben,

I've included below our comments on the Notice of Proposed Rulemaking. However, only the wireless Notice came through with your previous email message. These comments were prepared largely by John Mullen a member of our team that focused specifically on the FCC issues. He also attended the tribal FCC hearings over the course of the project.

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At 03:35 PM 9/8/99 -0400, you wrote:
>I came across your report. I thought you might like to know that the
>Federal Communications Commission is currently exploring the same subject.
>We have recently released two Notices of Proposed Rulemaking (NPRM). Maybe
>you would want to submit comments.
>
>I have attached the NPRMs (one is in word (.doc), the other is in wordperfect).
>
>Benjamin Freeman
>
>Federal Communications Commission
>Wireless Telecommunications Bureau
>Auctions and Industry Analysis Division
>202-418-0628
>bfreeman@fcc.gov
>

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OFFICE OF THE SECRETARY

Comments submitted by John Mullen (jomullen@nmsu.edu) (505) 646-2958

My copy of the document has numbered paragraphs. I will refer to sections by paragraph or footnote number.

Footnote 4: the problem with the definition that I see is that it is possible for facilities to exist, e.g. satellites, yet customers in the area still not receive services. On the other hand, what is meant by "area" and "facilities?" For example could an area as small as a quarter section be considered unserved? What about an area of several thousand acres and perhaps 50 potential customers served by two six party lines? Is it possible to define "unserved" from the potential customers' perspective?

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Paragraphs 8 - 10: although we heard a lot of complaints, there are clearly some success stories. The common denominator seems to be that the service provider is primarily interested in providing service to a particular class of customer. The problem seems to arise when a service provider serves both a very rural Native American area and a nearby higher density or non-native area.

Paragraph 13: satellite technology offers promise but there are two problems. First of all, until satellite utilization increases, the cost of this technology will be high. Native American communities can use this technology after the customer base is sufficiently large, but will

suffer high-costs if they try to utilize the technology too soon. Secondly, some have reported that because of very uneven terrain, there are many dead spots on some reservations. So even if the cost is low, the technology may not work.

Paragraph 19: as things now stand, BETRS may be licensed only to local exchange carriers or others that have been state certified. Given that Native American lands are sovereign, and the fact that too often states compete with included Native American communities, is it possible for Tribal governments to certify BETRS in certain conditions?

Paragraph 24: insufficient buildout is a widespread problem. Most local providers are incorporated and may be publicly own. If so, they are obligated to maximize the return on investment within the constraints of their license. Since extending services into very rural areas is much more expensive and generates less revenue then into nearby more highly populated areas, they will always be a tendency to under serve these areas. These multipliers will have to be considered very carefully. Within a license area, it may be necessary to conduct a survey and have different multipliers for different areas.

Paragraph 25: this address is the fundamental concept of what a license is. If the license holder has an obligation to serve the public, then a failure to provide that service should be cause to revoke or modify that license. If we simply allow a wireless licensee to extend into such an area, that wireless licensee risks a stranded investment if the original license holder later provides wire line service in the same area. In addition, some agency will need to determine whether or not there is interference. Otherwise the original license holder could simply claim, interference even if there isn't any.

Paragraph 42: while the binding agreement affords some protection, as pointed out here there are difficulties. The biggest problems seems to be 1) providers promising services then not delivering and 2) a change in Tribal government leading to a canceled agreement. To address problem 1, these agreements could contain required levels of performance and specify remedies, such as fines, in the event that level is not achieved. Similar specifications could be made to protect the provider. Since this agreement would be in the form of a contract, the FCC need not get involved in the details.

Paragraph 48: this is an excellent idea! There will be complications. For example in Oklahoma, checker boarding is common. It may not be possible or desirable to separate Native and non-native lands, but consideration of tribal entities in drawing license boundaries could greatly enhance the situation on Native lands without deteriorating service in adjacent non-native lands.

Paragraph 51: a bidding credit tied to population is not likely to work. It would work if the cost per customer were the same, but the problem is it is not. So in the example, if the population of the unserved area is 20 percent, a 20 percent credit would not be sufficient in the event that the cost of providing service could be equal to or even greater than that of providing service to the 80 percent.

Paragraph 55: if the geographic coverage requirements and multiple

licensing schemes were sufficient to create market base incentives for unserved and rural areas, they would be no problem. I think it is accurate to say that these mechanisms are sufficient in some areas and should probably be left as they are where they are working. However, they need to be augmented with some other mechanism in the areas in which they are clearly not working.

CC: K4DOM.K4PO1(MNADEL)